IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8501 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

EXECUTIVE ENGINEER

Versus

JASWANT BHAILAL ACHARYA

Appearance:

MR DD VYAS WITH MR UM PANCHAL for Petitioner

MRS DT SHAH for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 15/12/2000

ORAL JUDGEMENT

The petitioner before this court is the Surendranagar District Panchayat. The petitioner challenges the judgment and order dated 3rd August, 1992,

passed by the Presiding Officer, Labour Court, Surendranagar, in Reference (LCS) No. 883/89.

It was the case of the respondent-workman that on 11th March, 1985, he was appointed as a Clerk in the scale of Rs. 260-400, and without any rhyme or reason, his service was terminated on 12th August, 1987. After the termination of his service, certain new appointments were also made. The termination of his service was in violation of section 25 (f) and 25 (g) of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act'). Feeling aggrieved, he raised an industrial dispute which was referred to the Labour Court, Surendranagar, and was numbered as above.

The claim made by the respondent-workman was contested by the petitioner-Panchayat. It was denied that the workman was appointed in the scale of Rs.260-400 as alleged by him. It was contended that the workman was engaged as and when his service was required either on nominal muster roll on daily wages or for a particular period on fixed pay. Besides, after the termination of his service, he was gainfully employed and was receiving the salary higher than what he was paid by the petitioner-Panchayat. The court below found that the last pay received by the workman was Rs.500/-PM. After the termination of his service, he was gainfully employed and was receiving Rs. 300/- PM. The learned Tribunal also found that the workman was retrenched without paying retrenchment compensation and that in the facts of the case, section 2 (oo) (bb) of the Act can not be invoked. In view of this finding, the court below set aside the termination of service of the workman and directed him to be reinstated in service with 40% of the back wages.

I have perused the record produced by the either parties. No appointment order has comeforth which would indicate that the appointment of the workman was for a limited period or for a particular project. Unless the petitioner-Panchayat proves that the appointment of the workman was for a particular period or for a particular project, and that on completion of the said period or project, his service stood terminated, the exception contained in section 2 (oo) (bb) of the Act can not be invoked. The court below has, therefore, rightly held that the workman was entitled to receive retrenchment compensation and the termination of his service without paying such compensation was bad and illegal. Besides, even today after perusing the records Mr. Vyas states that the workman was paid daily wage of Rs. 19.50 and was paid a sum of more than Rs.500/- as wages during the

last month of his service. Considering the above statement and the last pay paid to the workman, the award of 40% of the back wages is wholly justified and does not warrant interference.

In view of the above discussion, the petition is dismissed. Rule is discharged. The petitioner-Panchayat shall pay to the respondent-workman 40% of the wages calculated on the basis of the last pay paid to the respondent-workman from the date of the termination of his service till 30th September, 1992, as ordered by the court below. The petitioner-Panchayat will also pay interest on such amount at the rate of 12% p.a. from the date of the Award till the date of payment as ordered by this court (Coram : A.P Ravani & J.M Panchal JJ.) on 22nd January, 1993. The petitioner-Panchayat will also pay the whole of the amount of the wages calculated on the basis of the last wages paid to the workman for the period from 1st October, 1992, till the date of reinstatement. The whole of the aforesaid amount shall be paid to the workman within a period of three months from today.

[Miss R.M Doshit, J.]

JOSHI